

PATENT
Atty. Dkt. No. Weiss3-1**REMARKS**

In the Office Action, the Examiner noted that claims 1-32 are pending in the application and that claims 1-8, 13-24, 29, and 32 are rejected. The Examiner objected to claims 9-12, 25-28, and 30-31. By this response, claims 14, 29, and 32 are amended. In view of the above amendments and the following discussion, Applicants submit that none of the claims now pending in the application are indefinite under the provisions of 35 U.S.C. §112, non-statutory under the provisions of 35 U.S.C. §101, or anticipated under the provisions of 35 U.S.C. §102. Thus, Applicants believe that all of these claims are now in condition for allowance.

I. CLAIM OBJECTIONS**A. Claim 29**

The Examiner has objected to claim 29 due to informalities. In particular, the Examiner requested replacement of "claim 15" with "claim 16" in claim 29. Applicants have amended claim 29 to depend from claim 16 by replacing "claim 15" with "claim 16". As such, Applicants respectfully request that the objection to claim 29 be withdrawn.

B. Claims 9-12, 25-28, 30-31

The Examiner has objected to dependent claims 9-12, 25-28, and 30-31 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Applicants thank the Examiner for indicating allowable subject matter but believe independent claims 1 and 16, from which each of these dependent claims depends, are allowable over the prior art of record for the reasons set forth below. Thus, Applicants respectfully request that the objection to claims 9-12, 25-28, and 30-31 be withdrawn.

II. REJECTION OF CLAIMS UNDER 35 U.S.C. §112

The Examiner has rejected claim 14 for lacking proper antecedent basis for the limitation "said communication channel". Applicants have amended claim 14 to state "said communications channel". Proper antecedent basis for "said communications

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channel" is found in claim 1. In particular, claim 1 recites "...a second buffer, for receiving and forwarding to a communications channel said sequences of transport cells, said second buffer having associated with it a second buffer utilization level..." As such, Applicants respectfully request that the rejection of claim 14 be withdrawn.

III. REJECTION OF CLAIMS UNDER 35 U.S.C. §101

The Examiner has rejected claim 32 because the claimed invention is directed to non-statutory subject matter. In particular, the Examiner requested the amendment of claim 32 to reflect the computer program causing a computer device to perform the listed steps. Applicants have amended claim 32 to recite, "A computer readable medium storing a software program, that, when executed by a computer, causes the computer to perform a method comprising the steps of". Applicants contend that amended claim 32 recites statutory subject matter. As such, Applicants respectfully request that the rejection of claim 32 be withdrawn.

IV. REJECTION OF CLAIMS UNDER 35 U.S.C. §102

The Examiner rejected claims 1-8, 13-24, 29 and 32 as being anticipated by Kinrot (United States patent 6,574,193, issued June 3, 2003). The rejection is respectfully traversed.

More specifically, the Examiner stated that Kinrot discloses an apparatus comprising "a plurality of encoders (22) for encoding respective sampled audio streams to produce respective encoded streams...a plurality of first buffers (28), for receiving respective encoded streams and forming therefrom respective sequences of transport cells, each of said transport cells comprising a portion of said respective encoded audio stream...each of said first buffers having associated with it a respective first buffer utilization level...; and a second buffer (30), for receiving and forwarding to a communications channel said sequences of transport cells...said second buffer having associated with it a second buffer utilization level...wherein each of said encoders adapting an encoded fidelity level...In response to at least one of said respective first buffer utilization level (28) and said second buffer utilization level (30)...". (Office

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Action, p. 3-4). The Examiner concluded that Kinrot anticipates Applicants' invention as recited in claims 1-8, 13-24, 29 and 32. The Applicants respectfully disagree.

Kinrot generally teaches a variable-rate encoding apparatus operative to receive data and process the data for transmission through an asynchronous transfer mode network. (See Kinrot, Abstract). In particular, Kinrot teaches encoding received data to provide encoded data packets to at least one virtual circuit at a rate that is selected responsive to the degree of circuit congestion, where the degree of circuit congestion is determined by a processor. (Kinrot, Abstract).

Kinrot, however, does not teach each and every element of Applicants' invention as recited in independent claim 1. Namely, Kinrot does not teach or suggest the limitation of "a second buffer, for receiving and forwarding to a communications channel said sequences of transport cells, said second buffer having associated with it a second buffer utilization level". Specifically, Applicants' claim 1 recites:

An apparatus, comprising:

a plurality of encoders for encoding respective sampled audio streams to produce respective encoded streams;

a plurality of first buffers, for receiving respective encoded streams and forming therefrom respective sequences of transport cells, each of said transport cells comprising a portion of said respective encoded audio stream, each of said first buffers having associated with it a respective first buffer utilization level; and
a second buffer, for receiving and forwarding to a communications channel said sequences of transport cells, said second buffer having associated with it a second buffer utilization level; wherein

each of said encoders adapting an encoding fidelity level in response to at least one of said respective first buffer utilization level and said second buffer utilization level.

(Emphasis added.)

The Examiner contends that Kinrot discloses "a second buffer (30)...said second buffer having associated with it a second buffer utilization level". As taught in Kinrot, however, the element 30 is an asynchronous transfer mode multiplexer. Specifically, Kinrot teaches that "[t]he cell queue length, or fill, in each of queues 28 varies as a function of...the individual and collective cell output rate from multiplexer 30". (Kinrot, Column 7, Lines 21-25). In other words, Kinrot teaches the adjustment of the queue size in response to changes in the cell rate that is output from the ATM multiplexer

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(element 30). Nowhere in Kinrot is there any teaching or suggestion of a second buffer having a second buffer utilization level, as taught in Applicants' claim 1.

Kinrot teaches an ATM multiplexer that receives data streams (outputs of the cell queues), combines the received data streams and transmits the combined data streams towards a communication channel. As taught in Kinrot, however, the ATM multiplexer only monitors its output data rate in order to set the queue size. Nowhere in Kinrot is there any teaching, showing, or suggestion of monitoring an input data rate of the ATM multiplexer.

A buffer utilization level, as disclosed in Applicants' invention, corresponds to the relative fill level of a buffer, which is determined using a combination of the output data rate from the buffer, as well as the input data rate to the buffer. In other words, in order to compute a utilization level of a buffer, both the data rate into the buffer and the data rate from the buffer are required. As such, since Kinrot does not teach or suggest determination of an input data rate to the ATM multiplexer, Kinrot cannot possibly teach a utilization level associated with the ATM multiplexer.

Therefore, an ATM multiplexer having a cell output rate, as taught in Kinrot, is simply not a second buffer having a second buffer utilization level, as taught in Applicants' claim 1. Furthermore, nowhere in Kinrot is there any teaching, showing, or suggestion of a second buffer having a second buffer utilization level, as taught in Applicants' claim 1. Therefore, Kinrot does not teach each and every element of Applicants' invention as taught in claim 1.

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984) (emphasis added). Since Kinrot does not teach a second buffer having a second buffer utilization level, Kinrot fails to disclose each and every element of the claimed invention, as arranged in Applicants' claim 1. Therefore, the Applicants submit that independent claim 1 is not anticipated by Kinrot and, as such, fully satisfies the requirements under 35 U.S.C. §102 and is patentable thereunder.

Furthermore, independent claims 16 and 32 recite methods having features similar to those of claim 1 emphasized above. As such, Kinrot does not teach each and

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every element of claims 16 and 32. Specifically, Kinrot does not teach or suggest the substantially similar feature of "a second buffer, said second buffer having associated with it a second buffer utilization level". Therefore, the Applicants contend that claims 16 and 32 are not anticipated by Kinrot and fully satisfy the requirements of 35 U.S.C. §102.

As such, the Applicants submit that independent claims 1, 16 and 32 are not anticipated and fully satisfy the requirements under 35 U.S.C. §102 and are patentable thereunder. Furthermore, claims 2-8, 13-15, 17-24 and 29 depend, either directly or indirectly, from independent claims 1 and 16, and recite additional features thereof. As such, and for at least the same reasons discussed above, the Applicants submit that the dependent claims 2-8, 13-15, 17-24 and 29 also fully satisfy the requirements under 35 U.S.C. §102 and are patentable thereunder. Therefore, the Applicants respectfully request that the rejections be withdrawn.

CONCLUSION

Thus, Applicants submit that none of the claims presently in the application are indefinite under the provisions of 35 U.S.C. §112, non-statutory under the provisions of 35 U.S.C. §101, or anticipated under the provisions of 35 U.S.C. §102. Consequently, Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring any adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Eamon J. Wall, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

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Respectfully submitted,



Eamon J. Wall
Registration No. 39,414
MOSER, PATTERSON & SHERIDAN, L.L.P.
595 Shrewsbury Ave. Suite 100
Shrewsbury, NJ 07702
Telephone: (732) 530-9404
Facsimile: (732) 530-9808
Attorney for Applicant(s)